

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

BET MIDRASH OHR HA-CHAYIM HA-
KODOSH, INC.,

Plaintiff,

Case No: _____

v.

AMERICAN ZURICH INSURANCE
COMPANY,

Defendant.

_____ /

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, defendant, American Zurich Insurance Company (“American Zurich”), through undersigned counsel, hereby removes the above-captioned matter to this Court from the Circuit Court of the Seventeenth Judicial Circuit of Florida, Broward County (the “State Court Action”), stating as follows:

1. The State Court Action was commenced by plaintiff, Bet Midrash Ohr Ha-Chayim Ha-Kadosh, Inc. (“Bet Midrash”), with the filing of its Complaint on October 18, 2023 in the Circuit Court of the Seventeenth Judicial Circuit of Florida, Broward County (Case No. CACE-23-019812).

2. American Zurich was served with a summons and a copy of the Complaint by the Chief Financial Officer of the State of Florida via electronic delivery on October 26, 2023.

3. American Zurich is the sole defendant in the State Court Action. Pursuant to 28 U.S.C. §1446(a), a copy of all process, pleadings, and orders served upon American Zurich in the State Court Action is attached hereto as Exhibit “A.”

4. The Complaint alleges that American Zurich “improperly denied and/or underpaid” Bet Midrash’s claim for insurance proceeds allegedly due under an insurance policy bearing policy number ER74028382 (the “Policy”) in connection with a claim for water damage that reportedly occurred on or about March 14, 2023 at Bet Midrash’s property located at 1720 Harrison St., #2A/3A, Hollywood, FL 33020 (the “Property”). The Complaint consists of one count for breach of contract.

JURISDICTION

I. Diversity of Citizenship

5. American Zurich and Bet Midrash are citizens of different states for purposes of establishing this Court’s subject matter jurisdiction under 28 U.S.C. § 1332.

6. American Zurich is an Illinois corporation with its principal place of business in Illinois. Attached as Exhibit “B” is a true and correct copy of a publicly available record from the website of the Illinois Department of Insurance (www2.illinois.gov/sites/insurance). Also attached as Exhibit “C” is a true and correct copy of a publicly available record from the website of the Florida Office of Insurance Regulation (www.floir.com). These records confirm that American Zurich is incorporated in Illinois and maintains its principal place of business at 1299 Zurich Way, Schaumburg, Illinois 60196.

7. Bet Midrash is a citizen of the State of Florida. Attached as Exhibit “D” is a true and correct copy of a publicly available record from the Florida Department of State, Division of Corporations (www.dos.myflorida.com/sunbiz). This record confirms that Bet Midrash is incorporated in Florida and maintains its principal place of business at 2863 Stirling Road, Fort Lauderdale, FL 33312.

8. Based on the above, since American Zurich is a citizen of the State of Illinois and Bet Midrash is a citizen of the State of Florida, complete diversity of citizenship exists under 28 U.S.C. § 1332.

II. Amount in Controversy

9. The amount in controversy in this action, exclusive of interest and costs, exceeds the jurisdictional amount of \$75,000, as set forth in 28 U.S.C. § 1332.

10. The Complaint does not seek a sum certain. It merely alleges that “[t]his is an action for damages in excess of \$50,000.00, exclusive of attorneys’ fees, costs, and prejudgment interest.” *See* Ex. A, Complaint, ¶1.

11. However, as mentioned above, Bet Midrash submitted a claim under the Policy for alleged water damage to the Property. In connection with its claim, Bet Midrash is relying upon a detailed estimate of damages, dated April 22, 2023, prepared by LMR Public Adjusters, totaling \$270,119.91 (the “Estimate”). A true and correct copy of the Estimate is attached hereto as Exhibit “E.”

12. Additionally, Bet Midrash is seeking attorneys’ fees from American Zurich in this action (*See* Ex. A, Complaint at ¶ 15 and at the “Wherefore” clause), which must also be considered in determining the amount in controversy. *See Morrison v. Allstate Indem. Co.*, 228 F.3d 1255, 1265 (11th Cir. 2000) (“When a statute authorizes the recovery of attorney’s fees, a reasonable amount of those fees is included in the amount in controversy.”); Fla. Stat. § 627.428 (authorizing the recovery of attorneys’ fees against an insurer upon the rendition of a judgment or decree in favor of any named or omnibus insured under a policy or contract executed by the insurer).

13. American Zurich conducted a detailed investigation of the claim and ultimately issued payments to Bet Midrash totaling \$113,327.40 (after application of \$5,000 deductible) for

the covered, undisputed part of the claim under the Policy. *See* letter from E. Grassmuck to D. Ilani dated August 5, 2023 attached hereto as Exhibit “F.”

14. In light of the above, since Bet Midrash alleges that it is owed \$270,119.91 in damages under the Policy and is also entitled to recover its attorneys’ fees in this action, and because American Zurich issued payments to Bet Midrash totaling \$113,327.40 (after application of \$5,000 deductible), the amount in controversy is at least \$156,792.51 (in claimed damages alone), which plainly exceeds the \$75,000 jurisdictional threshold of this Court.

TIMELINESS OF REMOVAL

15. This Notice of Removal is timely pursuant to 28 U.S.C. § 1446(b)(3) and *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344 (1999), because it is being filed within thirty (30) days after a copy of the initial pleading setting forth the claim for relief upon which this action is based was served upon American Zurich, i.e., October 26, 2023.

16. Additionally, this Notice of Removal is being filed within one (1) year from the commencement of the State Court Action on October 18, 2023, and therefore meets the timeliness requirement set forth in 28 U.S.C. § 1446(c)(1).

17. In sum, because diversity of citizenship exists as between American Zurich on the one hand, and Plaintiffs on the other, and the amount in controversy exceeds \$75,000, this Court has subject matter jurisdiction over this proceeding pursuant to 28 U.S.C. § 1332.

18. The United States District Court for the Southern District of Florida encompasses the place where the State Court Action is pending. Accordingly, this Court is the proper federal venue for this action.

19. No previous application has been made for the relief requested herein.

20. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal is being served upon counsel for Plaintiffs and a copy is being filed with the Clerk of the Circuit Court of the Seventeenth Judicial Circuit of Florida, Broward County.

WHEREFORE, American Zurich Insurance Company respectfully removes this action from the Circuit Court of the Seventeenth Judicial Circuit of Florida, Broward County.

Dated: November 24, 2023

Respectfully submitted,

ZELLE LLP

By: s/ Jason M. Chodos
Jason M. Chodos, Esq. (FL Bar No. 025823)
jchodos@zellelaw.com
110 E. Broward Blvd., Suite 2000
Fort Lauderdale, FL 33301
Tel.: (786) 693-2351
Fax: (612) 336-9100
Attorneys for Defendant,
American Zurich Insurance Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 24, 2023, I served the foregoing Notice of Removal upon Daniel M. Ilani, Esq. and Nicole S. Houman, Esq., The Property People FL, P.A., 80 SW 8th Street, Suite 2590, Miami, FL 33130, by e-mail via the Florida ePortal system to which they are registered.

s/ Jason M. Chodos
Jason M. Chodos